

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.9467 OF 2007

N.S.Rasheed

... Petitioner

-vs-

R.Loganathan

... Respondent

Petition under Section 482 of the Code of Criminal Procedure.

For petitioner : Mr.Rupert J.Barnabas
for Mr.M.Maharaja.

For respondent : Mr.S.Vijayakumar

O R D E R

This petition has been filed to call for the records of the learned Judicial Magistrate, Alandur, Chennai, and quash the proceedings in C.C.No.244 of 2007 on his file.

2. Petitioner is accused in C.C.No.244 of 2007. Respondent lodged a complaint under Section 138 of the Negotiable Instruments Act before the Court below, on the strength of two cheques for Rs.1,60,000/- each, dated 05.09.2006. It is stated in the complaint that on 09.10.2006, he issued a legal notice, which was received by the accused.

3. Learned counsel for the petitioner would strenuously contend that taking cognizance of the complaint by the Judicial Magistrate is in violation of law and that the petitioner did not receive any notice from the respondent, with regard to the claim on the strength of the cheques.

4. In fact, on 02.09.2006, the respondent presented both the cheques to his banker, but, on 12.09.2006, they were dishonoured, on the ground 'funds insufficient'.

5. It is very much stressed by the learned counsel for the petitioner that the date of cheques being 05.09.2006, presenting of the same on 02.09.2006 is not proper; on 02.09.2006, the cheques remained only as bills of exchange and they did not become cheques. In support of his contention, the learned counsel relied upon a decision of the Hon'ble Supreme Court in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., 2001 Supreme Court Cases (Cri) 582 = 2001 (3) Supreme Court Cases 609, in which it was held that when a post-dated cheque is written or drawn, it is only a bill of exchange.

6. Another circumstance to be noted in this case is, the respondent had not presented the cheques to the State Bank of Travancore, Perumbavoor, on which the cheques were drawn, but, they were presented to UTI Bank, Madipakkam Branch, Chennai, on 02.09.2006.

7. The contention of the learned counsel for the respondent is that even though the cheques were presented to UTI Bank on 02.09.2006, only on 12.09.2006, the said Bank returned the cheques, under reference "funds insufficient" and this intimation of 'insufficient funds' was intimated to the respondent on 25.09.2006; it is immaterial that the cheques were presented to some other bank, previous to the date mentioned in the cheques, as, they should be received by the bank on which the cheques were drawn after 05.09.2006 and, in this case, the very fact that the cheques were returned on 12.09.2006 shows that they were received by State Bank of Travancore, Perumbavoor Branch, only after 05.09.2006.

8. In support of his contention, learned counsel for the respondent garnered support from a decision of the Supreme Court in Anil Kumar Sawhney v. Gulshan Rai, 1993 Supreme Court Cases (Cri) 1243, in which it was held that the post-dated cheque is not payable till the date which is shown on the face of the said document and it will only become cheque on the date shown on it and prior to that it remains a bill of exchange under Section 5 of the Act.

9. An identical question of law was also discussed by a Division Bench of the Kerala High Court in Manoj K. Seth v. R.J.Fernandez, 1991 Cri.L.J.3253, the operative portion of which is culled out as under :

"9. In considering the said aspect, it will be necessary to know the character of a post-dated cheque. Post-dated cheque is one containing a later date than that of the delivery. Therefore, it has an implied notice that there is no present deposit to the credit of the drawer and an implied guarantee that the funds would exist when it becomes due. Though the cheque is payable only on a future date, it may be negotiable. There is no prohibition in the Act against post-dating a cheque. If a banker pays the amount before the due date of a cheque, he will lose the statutory protection

arising from such payment. In the decision in Jiwanlal v. Rameshwarlal, AIR 1967 SC 1118, in considering the question as to when would a payment be deemed to have been made as per a post-dated cheque for the purpose of Section 20 of the Limitation Act, it is held that the material date is the date on which the payment could have been made. In that case, post-dated cheque was given on 4.2.1954, it was dated February 25, 1954. The Supreme Court held in para 8 at page 1122 :

'We are, therefore, of opinion that as a post-dated cheque was given on February 4, 1954, and it was dated February 25, 1954, and as this was not a case of unconditional acceptance, the payment for the purpose of Section 20 of the Limitation Act could only be on February 25, 1954, when the cheque could have been presented at the earliest for payment.'

10. Pertinent it is to state that the learned counsel for the respondent also relied upon the same decision of the Hon'ble Supreme Court, which was cited by the learned counsel for the petitioner, in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., 2001 Supreme Court Cases (Cri) 582 = 2001 (3) Supreme Court Cases 609. The principles laid down in the said decision containing the relevant portions, which both the counsel relied upon, are as follows :

"To make an offence under Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within the statutory period. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post-dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six months' period has to be reckoned, for the purposes of Section 138 of the Act, from the said date.

The use of the words "a bank" and "the bank" in the section are an indicator of the intention of the legislature. "The bank" referred to in proviso (a) to Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued."

11. The Apex Court has laid down a law that if a post-dated cheque is presented to a bank, it is only a bill of exchange and dishonour of which will not attract the provisions of Section 138 of the Negotiable Instruments Act. But, in this case, the cheques were presented for collection to the bank of the payee, namely, respondent and the bank, on which the cheques were drawn, received them only after 05.09.2006.

12. Hence, applying the principles laid down by the Hon'ble Apex Court, it has to be held that the procedure has been scrupulously followed by the respondent and the complaint lodged by the respondent is thoroughly in order.

13. The next limb of contention of the learned counsel for the petitioner is that he was not served with legal notice, allegedly issued by the respondent.

14. As a matter of fact, the respondent sent a legal notice to the petitioner through his counsel on 09.10.2006, but he did not receive acknowledgement therefor. Hence, he lodged a complaint with the postal department, for which, on 14.11.2006, receipt of the letter was acknowledged by the Customer Care Centre of the said Department. On 21.11.2006 also, a communication was received by the respondent, mentioning as follows :

"In continuation of our letter regarding the complaint No.60020011833, it is to inform you that the complaint of Non Receipt of Ack./Proof of Delivery of Registered Letters with Acknowledgement with Transaction No.A2685 on 11/10/2006 of ALANDHUR - 600 016 is settled on 20/11/2006 with the following information that "KINDLY INTIMATE THE FULL ADDRESS PARTICULARS OF THE ADDRESSEE WITH PIN CODE FOR FURTHER INQUIRY. ON RECEIPT OF THE SAME, THE CASE WILL BE INDEXED AFRESH".

Thereafter, on 29.06.2007, a communication with caption "complaint status" was forwarded to the respondent, in which it was stated that the complaint was pending.

15. The above said communications from the postal department would go a long way to show that the respondent has consciously been pursuing the matter to get acknowledgement from the petitioner, to show proper service.

16. In this context, the argument of the learned counsel for the respondent is that as per the settled proposition of law, it is to be treated that service on the petitioner is duly effected. In support of

his contention, the learned counsel garnered support from a decision of the Hon'ble Apex Court in C.C.Alavi Haji v. Palapetty Muhammed & Anr., 2007 (7) SCALE 380, in which it was held as follows :

"18. In the instant case, the averment made in the complaint in this regard is : "Though the complainant issued lawyer's notice intimating the dishonour of cheque and demanded payment on 4.8.2001, the same was returned on 10.8.2001, saying that the accused was 'out of station'. True, there was no averment to the effect that the notice was sent at the correct address of the drawer of the cheque by 'registered post acknowledgement due'. But the returned envelope was annexed to the complaint and it thus, formed a part of the complaint which showed that the notice was sent by registered post acknowledgement due to the correct address and was returned with an endorsement that 'the addressee was abroad'. We are of the view that on facts in hand the requirements of Section 138 of the Act had been sufficiently complied with and the decision of the High Court does not call for interference."

17. Following the observations made in the above said decision, it is to be held in this case that service has become sufficient, for the reason that the notice was sent by registered post with acknowledgement due to the address of the petitioner, but, it was not returned. In addition, possible steps have also been taken by the respondent to get acknowledgement from the petitioner. Hence, as per the above said ruling, the observation to be brought about is that the requirements of Section 138 of the Negotiable Instruments Act have been amply fulfilled.

18. For the foregoing reasons, this Court does not find any valid ground for quashing the proceedings in C.C.No.244 of 2007 on the file of learned Judicial Magistrate, Alandhur, Chennai. As such, this petition suffers dismissal and is, accordingly, dismissed. Consequently, the connected Criminal M.P.No.2 of 2007 also stands dismissed and Criminal M.P.No.3 of 2007, for vacating the stay, stands allowed.

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To

1. The Judicial Magistrate,
Alandur.

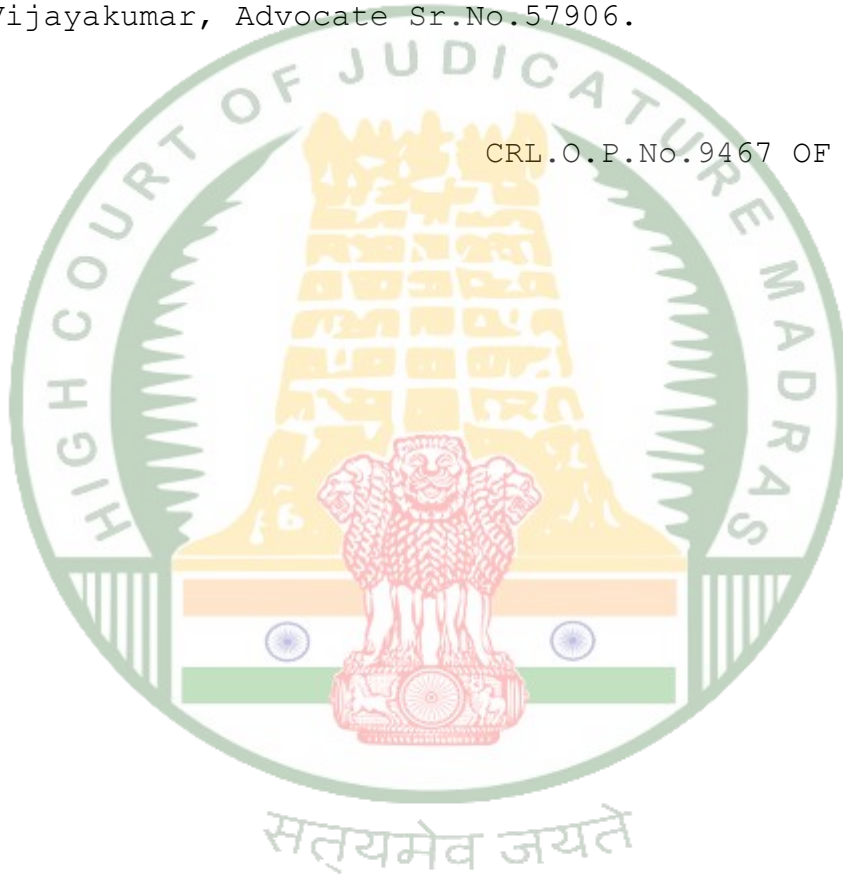
2. -do- Thro' The Chief Judicial Magistrate,
Chengalpattu.

+3 ccs to Mr.M.Maharaja, Advocate Sr.No.57906.

+1 cc to Mr.S.Vijayakumar, Advocate Sr.No.57906.

TS (CO)
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CRL.O.P.No.9467 OF 2007



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